

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SHEBUEL A. BEL,

Petitioner,

v.

PAT GLEBE,

Respondent.

Case No. C10-5775BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 16) and Petitioner’s objections to the R&R (Dkt. 17).

On March 28, Judge Creatura issued the R&R recommending that the Court deny Petitioner’s request for an evidentiary hearing and deny the petition for writ of habeas corpus. Dkt. 16 at 6, 10. On April 11, 2011, Petitioner filed objections. Dkt. 17.

A. Counsel under *Anders*

Petitioner objects to Judge Creatura’s interpretation of *Anders v. California*, 386 U.S. 738 (1967). Dkt. 17 at 1-5. Judge Creatura stated that the “state court only needed to re-appoint counsel if it found an issue had merit.” Dkt. 16 at 8. This statement, however, is a correct interpretation of the law. *See Anders*, 386 U.S. at 744. After Petitioner’s counsel requested permission to withdraw, the state court was vested with the discretion of whether

1 to re-appoint counsel if it found a legal point of appeal was not frivolous. *Id.* Therefore,
2 Petitioner's objection is without merit.

3 **B. Appointment of Counsel**

4 Petitioner argues that the state court should have appointed counsel to represent him
5 for his appeal. Dkt. 17 at 7-9. Judge Creatura found that "the state court found no merit to
6 any of the issues raised by petitioner; therefore, there was no need to appoint counsel." Dkt.
7 16 at 8. After a review of the record, the Court agrees with this finding. Petitioner even
8 admits that the "central legal point" on appeal was the duration of the victim's
9 unconsciousness and not the fact that the victim was knocked unconscious. Dkt. 17 at 7.
10 Therefore, Petitioner's objection is without merit.

11 **C. Evidentiary Hearing**

12 Petitioner objects to Judge Creatura's conclusions that Petitioner was not entitled to
13 an evidentiary hearing to contest a finding of fact made by the trial judge and that Petitioner
14 is not entitled to an evidentiary hearing in this Court (Dkt. 16 at 9). Dkt. 17 at 10-12.
15 Petitioner, however, fails to recognize that the findings of fact were entered by the state
16 court trial judge and that he is not entitled to a evidentiary hearing on facts at the appellate
17 level of review. Moreover, Petitioner is only entitled to an evidentiary hearing in this Court
18 based on certain criteria that are outlined in the R&R. *See* Dkt. 16 at 6. Petitioner has failed
19 to show that he meets those criteria. Therefore, Petitioner's objection is without merit.

20 **D. Due Process**

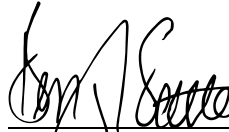
21 Petitioner's last objection is a disagreement with Judge Creatura's finding that
22 Petitioner's due process ground for review is frivolous. Dkt. 17 at 13-18. Petitioner argues
23 that the assault could not have lasted as long as alleged and, therefore, Petitioner lacked
24 intent to commit the crime. *Id.* The Court agrees with Judge Creatura's finding that this
25 ground for review is frivolous. Therefore, Petitioner's objection is without merit.

26 The Court having considered the R&R, Petitioner's objections, and the remaining
27 record, does hereby find and order as follows:

1 (1) The R&R is **ADOPTED**; and

2 (2) The petition for writ of habeas corpus is **DENIED**.

3 DATED this 24th day of May, 2011.

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6 BENJAMIN H. SETTLE
7 United States District Judge
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